IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2007

CORAM :

THE HON'BLE MR. JUSTICE S.TAMILVANAN

A.S.No.138 of 1996
and
C.M.P.No.3326 of 2007

Syndicate Bank, Shevapet Branch
Rep. by its Branch Manager
Sri.P.Krishnan ... Appellant

Vs.

S.R.Subramaniam ..... Respondent

Appeal filed against the Judgment and Decree, dated 03.02.1994 made in O.S.No.271 of 1987 on the file of the Additional Subordinate Judge, Salem.

For Appellant : Mr.S.Ramachandran for
Mr.K.Chandrasekaran

For Respondent : Mr.R.Subramanian

J U D G M E N T

The appeal is directed against the Judgment and Decree, dated 03.02.1994, made in O.S.No.27 of 1987 on the file of Additional Subordinate Judge, Salem.

2. The appellant herein was the plaintiff in the suit, before the trial court. The appellant bank filed the suit against the respondent, seeking a decree for a sum of Rs.3,48,544.35/- to be paid with subsequent compound interest at 16% per annum. The trial court by the impugned Judgment and Decree directed the respondent herein to pay Rs.40,000/- with 12½% interest only from the date of filing of the suit till the date of realization with proportionate costs, and not from the date of the loan transaction, till the filing of the suit. Aggrieved by which, this appeal has been preferred by the plaintiff.

3. Mr. S.Ramachandran, learned counsel appearing for the appellant submitted that as per Ex.A.1, Memorandum of Agreement, dated 18.02.1974, the respondent had obtained a sum of Rs.40,000/- from the appellant bank and agreed to repay the amount with

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interest at the rate of 4 ½ % per annum, above the Reserve Bank of India rate, subject to the minimum of 11 ½% per annum and that the respondent has not paid the instalments as stipulated in Ex.A.1, hence, as per the agreement, the appellant bank is entitled to overdue interest at the rate of 12 ½% per annum, which would be compound rate of interest (quarterly). According to the learned counsel, as the suit claim has been proved, the Court should have awarded interest, only at the contractual rate, as per the memorandum of agreement, Ex.A.1, but the court below has not awarded any interest for the period from 18.02.1974, date of loan to 29.04.1987, date of filing of the suit and therefore, the appeal has been preferred by the appellant bank. Admittedly, there is no cross objection by the respondent / defendant.

4. The learned counsel appearing for the respondent / defendant, would contend that as per Section 34 of the Code of Civil Procedure, the Court below has discretion to decide the rate of interest and accordingly, passed the decree. The learned counsel further contended that there is no agreement for payment of compound interest for the loan amount obtained by the respondent. In support of his contention, the learned counsel for the respondent relied on the following decisions :

1. Corporation Bank vs. D.S.Gowda, 1994 (5) SCC 213
2. Syndicate Bank vs. Muthian, 1990 (1) MLJ 316

5. In the decision, Corporation Bank vs. D.S.Gowda , reported in 1994 (5) SCC 213, the Hon'ble Supreme Court has held that interest with periodical rests on bank loan would be governed by terms of agreement between bank and the borrower, where such agreement exists.

6. As per Section 34 of the Code of Civil Procedure, if there is no contractual rate of interest, the Court can order interest at such rate, as the court deems reasonable to be paid on the principal sum adjudged. Proviso to Section 34 CPC, clearly stipulates that the liability in relation to a commercial transaction, that the interest fixed by the court may exceed 6% per annum, but shall not exceed the contractual rate of interest.

7. In the light of the decision referred above, it has been ruled by the Hon'ble Apex Court that the bank is entitled to get contractual rate of interest with periodical rests. In the instant case, it is not in dispute that Ex.A.1, memorandum of agreement was entered into between the appellant and the respondent herein.

8. It is seen from the evidence of P.W.1, Branch Manager of the appellant's bank that Ex.A.1, dated 18.02.1974 was filled up by him, in which the respondent had signed in all the pages of the agreement. Based on the agreement, the respondent had obtained the

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loan amount of Rs.40,000/- in two instalments of Rs.20,000/- each, for which, Ex.A.2 has been executed by P.W.1. Ex.A.3 is the Debit slip, dated 18.02.1974 for the receipt of Rs.20,000/- by the respondent from the appellant bank. For the payment of Rs.20,000/-, the credit note Ex.A.4 has been marked. Under Ex.A.5, Debit slip on 29.04.1974, the respondent received the next instalment of Rs.20,000/- from the appellant bank. As per Ex.A.7 and the evidence of P.W.1, on 14.02.1977, the respondent had executed acknowledgment of Debt for Rs.65,107.25/-. P.W.2 was the Branch Manager of the appellant bank and prepared Ex.A.8, which was signed by the respondent herein. In order to prove Ex.A.9, acknowledgment of debt, dated 09.01.1980, Ex.A.10, acknowledgement of debt, dated 20.12.1985, P.Ws.3 and 4 have been examined. P.W.5, an employee of the appellant bank was examined to establish the account copy, Ex.A.11 and Ex.A.12.

9. The respondent, who was examined as D.W.1 has admitted that he borrowed a sum of Rs.40,000/- from the appellant bank. Considering the oral and documentary evidence adduced by both sides, the trial court has held that the appellant bank is entitled to claim the amount advanced by the bank with interest. However, it is clear that the trial court has erroneously not considered the interest payable for about 13 years from the date of loan availed till the date of filing of the suit. When there is a contractual rate of interest, the Court should have awarded interest as per the contractual rate of interest, otherwise, the interest could have been decided, as per Section 34 of the Code of Civil Procedure. However, the Court below has fail to consider the interest, while passing the impugned Judgment and Decree.

10. In the decision rendered by the Division Bench of this Court, Syndicate Bank vs. Muthian, reported in 1990 (1) MLJ 316, this Court has held that the bank cannot charge more than the agreed rate of interest, as per the promissory note. In the said Judgment, it has been held as follows :

> " 5...The question arises whether even though the Reserve Bank has revised the rate of interest the plaintiff Bank can unilaterally without the consent of the defendants raise the rate of interest. It is not in dispute that the suit has been filed only on the promissory note. Therefore, the parties are bound by the terms in the promissory note only. When the rate of interest chargeable has been expressly stated in the promissory note only that rate can be claimed and not anything more... "

11. The decisions cited by the learned counsel for the respondent, are not applicable to the facts and circumstances of this case, since the contractual rate of interest has been

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stipulated in the memorandum of agreement, Ex.A.1, whereby the respondent being the borrower has to pay 4 ½ % per annum, above the Reserve Bank rate of interest, subject to the minimum of 11½% per annum and if the instalment is not regularly paid, then the appellant bank would be entitled to recover overdue interest at the rate of 12 ½ % per annum, as agreed by the respondent.

12. In the suit, admittedly, the bank has not claimed any interest on the basis of Reserve Bank rate of interest. The respondent has not disputed the fact that he had failed to pay regular instalments. As the respondent has failed to repay the dues for so many years, as per the memorandum of agreement, he is liable to pay the minimum interest at 12 ½ % per annum. The word quarterly interest is also available at paragraph number 4 of the agreement. In the memorandum of agreement, dated 18.02.1974, marked as Ex.A.1, Paragraph Number 4 reads as follows :

> " The borrower/s agrees/agree that if quarterly interest and/or any other instalment on due date is not paid, the arrears in the loan shall bear overdue interest at the rate of 12 ½ % per annum or such other rate fixed by the Bank for such loans from time to time until the interest and/or the instalment of the principal in arrears as the case may be are paid."

13. As per the memorandum of agreement signed by the respondent, since the regular instalments were not paid, the appellant bank is entitled to claim 12½% interest and that too on the basis of quarterly interest. Therefore, the arguments advanced on behalf of the respondent that there is no agreement for payment of interest and quarterly interest are not based on any evidence available on record. It is a clear case, whereby the respondent had borrowed the loan amount of Rs.40,000/- as per the memorandum of agreement, Ex.A.1, signed by the respondent. As there is default in repayment, he is liable to repay the said amount with 12 ½ % quarterly interest.

14. Learned counsel appearing for the respondent contended that the respondent was a sick industry and therefore, entitled to concession in the rate of interest, but there is no evidence available on record to substantiate the aforesaid allegations with regard to the alleged concession in the rate of interest. The said defence is also not available in the pleadings.

15. In this appeal, the respondent by way of filing C.M.P.No.3326 of 2007, has produced the Xerox copy of the evidence given by one Krishnan, who was the Branch Manager in the appellant bank during 1987, and a letter dated 30.09.1980, which are not relevant to decide the appeal herein, since the case is based on contractual rate of interest and there is no legal

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defence to reduce the said contractual rate of interest. Hence, C.M.P.No.3326 of 2007 filed under Order 41 Rule 27 CPC is dismissed.

16. As the appellant has established the contractual rate of interest, as per the memorandum of agreement, dated 18.02.1974, the bank is entitled to claim the said contractual rate of interest. Accordingly, I am of the view that the appeal has to be allowed.

17. In the result, the appeal is allowed and the Judgment and Decree passed by the trial court is set aside. Consequently, connected C.M.P.No.3326 of 2007 is dismissed. The respondent is directed to repay the loan amount of Rs.40,000/- borrowed from the appellant bank with 12 ½ % interest of quarterly rest, from the date of loan till the date of realization with proportionate costs. In the appeal, no order as to costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

tsvn

To

The Additional Subordinate Judge, Salem.

one cc to Mr.R.Subramaniam, advocate SR.No.75868

one cc to Mr.K.Chandrasekaran, advocate SR.No.74807

A.S.No.138 of 1996

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